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FTCNewsLine is an online quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by the Fair Trading Commission as well as other competition agencies from around the world. The aim is to provide readers with insights into some of the matters that are prosecuted in other jurisdictions and to assist businesses and consumers in better identifying issues that may pose competition concerns.

Competition legislation is specific to each jurisdiction and prohibited activities in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under Jamaica's competition legislation, the **FAIR COMPETITION ACT (FCA)**, please visit our website at www.iftc.gov.jm.

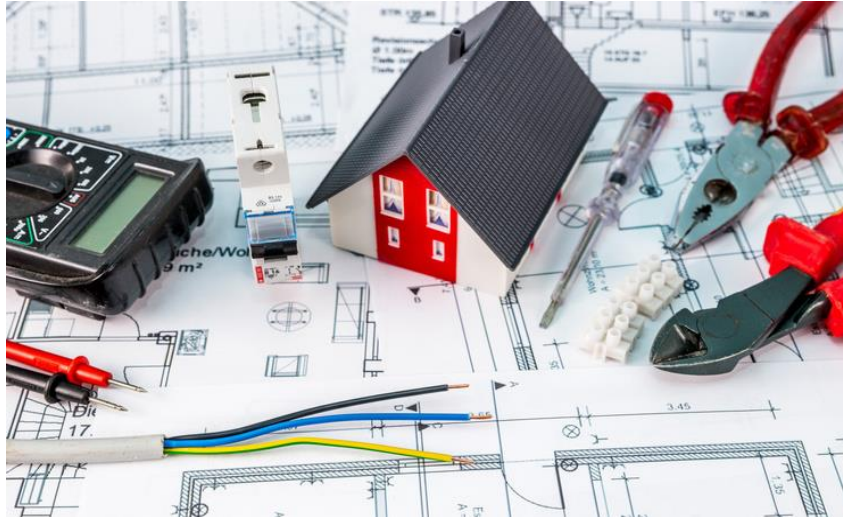
In this issue, we feature matters arising during the period April 1, 2022, to June 30, 2022.

FTC recommendations for the Cannabis Industry



The FTC completed an assessment of Jamaica's Cannabis industry to determine whether there are competition impediments to its expansion. Three recommendations were proposed: Policymakers should (a) consider establishing sources of funding to encourage easier entry/expansion of the legitimate trade of cannabis; (b) limit the duration of programmes designed to protect small farmers from exiting the industry, and (c) seek to expand the customer base for the industry by expanding the approved purposes for which cannabis products may be used in line with international best practices.

FTC assesses operations of the Government Electrical Regulator (GER)



The Ministry of Science, Energy and Technology sought the FTC's guidance on how to control what is perceived to be significant increases in prices following the privatization of the government's electrical inspection service.

The FTC proposed that the Government

Electrical Regulator (GER) (a) undertake a comprehensive sensitization and public education programme targeting inspectors, electricians, and consumers, (b) take steps to have many inspectors available in each geographical region throughout Jamaica, and (c) discourage collusion among electrical inspection service providers by not disclosing prices on the GER Web Portal.

FTC comments on Ministry of Transport & Mining Air Transport Services Agreements



The FTC reviewed the United Kingdom of Great Britain and Northern Ireland (UK) Model Air Services Agreement (ASA) and the Jamaica/Italy ASA Agreement to determine whether there are any competition concerns that should be addressed in the proposed Air Services Agreement between Jamaica and the UK.

The FTC concluded that there were no competition concerns in the Agreements and that both Agreements bind all the contracting parties to Jamaica's Fair Competition Act.

Legal Opinion on Realtor's Commission

The FTC issued an opinion on whether the Realtors Association of Jamaica (RAJ) could require its members to pay a minimum commission of 1.5% when two real estate companies are involved in the sale of a property.

The FTC examined the Real Estate (Dealers and Developers) Act and the by-laws of the RAJ within the context of the FCA; and concluded that the implementation of a minimum commission and/or minimum commission split for co-brokered transactions would constitute a price-fixing agreement and thus breach section 34 of the FCA.

Additionally, any such agreement(s) between members of the RAJ and/ or realtors, real estate dealers, brokers, agents, etc., would likely contravene section 17 of the FCA, which covers agreements that have as their purpose or effect the substantial lessening of competition. The imposition or agreement to a minimum commission in such transactions could result in listing agents/dealers/brokers etc., charging a higher commission than they would otherwise charge for these services, thereby negatively impacting consumers.

The FTC advised against the implementation, by the RAJ or any other body/entity, of such a minimum commission fee or structure when two real estate companies are involved in the sale of a property. Additionally, if members of the RAJ and/or realtors, etc., make such an agreement among themselves to set a minimum commission and/or a minimum commission on co-brokered transactions, they could also be in breach of the FCA. Further, realtors and real estate professionals must determine their cooperative compensation policies/commission on co-brokered transactions in the same unilateral and independent manner as they would establish their commission or other fees.



21st ICN Annual Conference: Berlin, Germany, from May 4 to 6, 2022



Executive Director of the FTC, Mr David Miller, presented in the Plenary Session entitled *"Implementation in the ICN"* on how the FTC used the ICN's Merger Guidelines Workbook to develop the FTC's Merger Assessment Guidelines. In the Advocacy Working Group Breakout Session entitled *"Advocacy to Sector Regulators and Public Bodies – Frenemies – when a regulator's objectives conflict with those of a competition agency"*, Mr Miller discussed the relationships between the FTC and the Spectrum Management Authority, Office of Utilities Regulation, Bank of Jamaica, Financial Services Commission and the Broadcasting Commission with respect to collaboration on investigations, market studies, advocacy activities, policy development, stakeholder consultations, and how conflicts between the competition principle objectives and sector regulation objectives are resolved.

Regional Conference - Governance Week 2022



Mr David Miller participated in a panel discussion entitled *"Engaging in Fair Trade"* at Governance Week 2022. The presentation discussed the need for boards of private enterprises to be aware of the regulatory environment within which they operate, including the competition legislation and the business activities that could result in breaches under the Fair Competition Act.



INTERNATIONAL COMPETITION NEWS

ACCC focused on competition issues with a shift to digital payments

In a speech to the Australian Financial Review Banking Summit on May 31, 2022, Australian Competition and Consumer Commission (ACCC) Chair Gina Cass-Gottlieb said that the focus of the ACCC's financial services enforcement and policy work for the next year will be competition in payments markets, investigating allegations of anti-competitive conduct, and protecting the interests of consumers.

These comments came a day after the ACCC entered into litigation with MasterCard for their alleged engagement in anti-competitive conduct with the intent of considerably lessening competition in the supply of debit card acceptance services.

The ACCC alleges that MasterCard entered into agreements with more than 20 major retail businesses, agreeing to give these businesses discounted rates for MasterCard transactions if the businesses obligate to carry out all or most of their MasterCard-EFTPOS debit card transactions through MasterCard as opposed to the EFTPOS network.

The ACCC also alleges that MasterCard had substantial power in the market for the supply of credit card acceptance services, and their conduct was substantially geared towards impeding the competitive process. MasterCard lessened competition by disincentivizing businesses from taking advantage of least-cost routing to use EFTOS for processing debit card transactions.

Source: www.accc.gov.au– July 12, 2022